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INC. and HYPERICE IP SUBCO, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SHENZHEN KELAISIMAN
TRADING CO., LTD., YONGKANG
TIANGE TECHNOLOGY CO., LTD.,
LISHUI TIANQUE NEW ENERGY
TECHNOLOGY CO., LTD.,
YONGKANG DILAKA
TECHNOLOGY CO., LTD.,
YONGKANG HEALTH FREIGHT
CO., LTD., ZHEJIANG AERLANG
TECHNOLOGY CO., LTD., AND
HANGZHOU LINGHUI
INTELLIGENT TECHNOLOGY CO.,
LTD.,

Plaintiffs,

v.

HYPER ICE, INC. and HYPERICE IP
SUBCO LLC,

Defendants.

CASE NO. 8:24-cv-01472-JWH-DFM
DEFENDANTS' FIRST AMENDED
ANSWER AND COUNTERCLAIMS
TO PLAINTIFFS' FIRST
AMENDED COMPLAINT

*Filed Concurrently with DEMAND
FOR JURY TRIAL*

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ANSWER

Defendants Hyper Ice, Inc. and Hyperice IP Subco, LLC (collectively “Hyperice” or “Defendants”) assert as follows for Hyperice’s answer to the First Amended Complaint brought by Plaintiffs:

NATURE OF THE ACTION

1. This action arises out of the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the United States Patent Act, 35 U.S.C. §1 *et seq.* Plaintiffs seek declaratory judgments that U.S. Patent No. 11,938,082 (“the ‘082 Patent”) and U.S. Patent No. 11, 857,482 (“the ‘482 Patent”) are not infringed by Plaintiffs’ products (“Non-Infringing Products”). True and correct copies of the ‘082 Patent and the ‘482 Patent are attached hereto as Exhibits 1 and 2, respectively.

RESPONSE: Hyperice admits that Plaintiffs assert their claims based on the cited statutes and laws. Hyperice denies the remaining allegations in this paragraph of the First Amended Complaint.

2. This action further arises under the laws of the state of California. Plaintiffs seek an order remedying HYPERICE’s tortious interference with an unfair competition.

RESPONSE: Admitted, but Hyperice denies Plaintiffs are entitled to such an order.

PARTIES

3. Shenzhen Kelaisiman Trading Co., Ltd. is a Chinese company with a principal place of business at 608, No. 27, You Song Comprehensive Market, You Song Community, Longhua Street, Longhua District, Shenzhen, China.

RESPONSE: Hyperice is without sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph of the First Amended Complaint and, therefore, denies them.

4. Yongkang Tiange Technology Co., Ltd. is a Chinese company, with a principal place of business at Room 10, West Side, Second Floor, Building 2, No.

222 Meilong Road, Xicheng Street, Yongkang, Jinhua, Zhejiang, China.

RESPONSE: Hyperice is without sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph of the First Amended Complaint and, therefore, denies them.

5. Lishui Tianque New Energy Technology Co., Ltd. is a Chinese company, with a principal place of business at Fifth Floor, Building 3, Xiaowei Park, Phase II, Hongshi Block, East Expansion Area, Lishui High-Tech Zone, Xinbi Street, Jinyun County, Lishui, Zhejiang, China.

RESPONSE: Hyperice is without sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph of the First Amended Complaint and, therefore, denies them.

6. Yongkang Dilaka Technology Co., Ltd. is a Chinese company, with a principal place of business at South Side, Fourth Floor, Building 1, No. 17 Jinshan East Road, Economic Development Zone, Yongkang, Jinhua, Zhejiang, China.

RESPONSE: Hyperice is without sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph of the First Amended Complaint and, therefore, denies them.

7. Yongkang Health Freight Co., Ltd. is a Chinese company, with a principal place of business at No. 199-28, Xueyaun North Road, Economic Development Zone, Yongkang, Jinhua, Zhejiang, China.

RESPONSE: Hyperice is without sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph of the First Amended Complaint and, therefore, denies them.

8. Zhejiang Aerlang Technology Co., Ltd. is a Chinese company, with a principal place of business at Room 301, No. 490, Jiulong North Road, Shilipai Village, Dongcheng Street, Yongkang, Jinhua, Zhejiang, China.

RESPONSE: Hyperice is without sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph of the First

1 Amended Complaint and, therefore, denies them.

2 9. Hangzhou Linghui Intelligent Technology Co., Ltd. is a Chinese
3 company, with a principal place of business at Room 905-3, Building 1, Meilai
4 International Center, Nanyuan Street, Yuhang District, Hangzhou, Zhejiang,
5 China.

6 **RESPONSE:** Hyperice is without sufficient information or knowledge to
7 form a belief as to the truth of the allegations in this paragraph of the First
8 Amended Complaint and, therefore, denies them.

9 10. Upon information and belief, Hyper Ice, Inc., is a corporation
10 organized under California law with its principal place of business at 525
11 Technology Drive, Suite 100, Irvine, CA 92618.

12 **RESPONSE:** Admitted.

13 11. Upon information and belief, Defendant HYPERICE is a Delaware
14 limited liability company with its principal place of business at 525 Technology
15 Drive, Suite 100, Irvine, California 92618.

16 **RESPONSE:** Denied.

17 12. Upon information and belief, Hyperice IP Subco, LLC is a wholly-
18 owned subsidiary of Hyper Ice, Inc.

19 **RESPONSE:** Admitted.

20 JURISDICTION AND VENUE

21 13. This action arises under the Declaratory Judgment Act, 28 U.S.C. §
22 2201, *et seq.*, the United States Patent Act, 35 U.S.C. § 1, *et seq.*, and the laws of the
23 state of California. This Court has subject matter jurisdiction over this action
24 pursuant to 28 U.S.C. §§ 2201, 2202, 1331, and 1338(a) because an actual case or
25 controversy currently exists between the Parties regarding the subject matter of this
26 action, and the Court would have subject matter jurisdiction over this action if
27 Defendants initiated suit for patent infringement.

28 **RESPONSE:** Admitted.

14. The Court has subject matter jurisdiction over the state law claims asserted in this action pursuant to 28 U.S.C. § 1367(a) because they are so related to the declaratory judgment claims that they form part of the same case or controversy.

RESPONSE: Admitted.

15. The Court has personal jurisdiction over Hyper Ice, Inc. based on information and belief that Hyper Ice, Inc. is domiciled in California and within this judicial district.

RESPONSE: Admitted.

16. The Court has personal jurisdiction over Hyperice IP Subco, LLC based on information and belief that Hyperice IP Subco, LLC is a wholly-owned subsidiary of Hyper Ice, Inc. and operates solely as a holding company for patents acquired by Hyper Ice, Inc.

RESPONSE: Hyperice admits that the Court has personal jurisdiction over Hyperice IP Subco, LLC, but denies the remaining allegations in this paragraph

17. Upon information and belief, Hyper Ice, Inc. and Hyperice IP Subco, LLC have filed multiple patent enforcement lawsuits in various jurisdictions as joint co-plaintiffs, including in this jurisdiction.

RESPONSE: Admitted.

18. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1), because Hyper Ice, Inc. and Hyperice IP Subco, LLC both reside in this district as residency is defined in 28 U.S.C. § 1391(c)(2).

RESPONSE: Hyperice admits that venue is proper, but denies the remaining allegations in this paragraph.

FACTUAL BACKGROUND

A. The Plaintiffs' Non-Infringing Products.

19. Plaintiff Shenzhen Trading Co., Ltd. sells massage guns on Amazon under the storefront "shenzhenkelaisimanshangmaoyouxiangongsi." The model of the massage guns sold by Shenzhen Kelaisiman Trading Co., Ltd. at issue is M68-

7. The corresponding Amazon Standard Identification Numbers (“ASINs”) are B08TLWYKLS and B0BJDL4HJN.

RESPONSE: Hyperice is without sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph of the First Amended Complaint and, therefore, denies them.

20. On or about June 11, 2024, Shenzhen Kelaisiman Trading Co., Ltd. received a notification from Amazon. This notice informed Shenzhen Kelaisiman Trading Co., Ltd. that Amazon removed shenzhenkelaisimanshangmaoyouxiangongsi’s listing, ASINs B08TLWYKLS and B0BJDL4HJN, because of the alleged infringement of the ‘082 Patent. The rights owner’s name is HYPERICE and its email address is barnold@hyperice.com. See Exhibit 3.

RESPONSE: Hyperice is without sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph of the First Amended Complaint and, therefore, denies them.

21. Plaintiff Yongkang Tiange Technology Co., Ltd. sells massage guns on Amazon under the storefront “APHERMA.” The model of the massage guns sold by Yongkang Tiange Technology Co., Ltd. at issue is X8. The corresponding ASINs are B0BG4HY4PX and B09P1DV7D8.

RESPONSE: Hyperice is without sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph of the First Amended Complaint and, therefore, denies them.

22. On or about June 11, 2024, Yongkang Tiange Technology Co., Ltd. received a notification from Amazon. This notice informed Yongkang Tiange Technology Co., Ltd. that Amazon removed APHERMA’s listings, ASINs B0BG4HY4PX and B09P1DV7D8, because of the alleged infringement of the ‘082 Patent. The rights owner’s name is HYPERICE and its email address is barnold@hyperice.com. See Exhibit 4.

1 **RESPONSE:** Hyperice is without sufficient information or knowledge to
2 form a belief as to the truth of the allegations in this paragraph of the First Amended
3 Complaint and, therefore, denies them.

4 23. Plaintiff Lishui Tianque New Energy Technology Co., Ltd. sells
5 massage guns on Amazon under the storefront “tianquexinnengyuan.” The model of
6 the massage guns sold by Lishui Tianque New Energy Technology Co., Ltd. at issue
7 is X6. The corresponding ASINs are B0BFF5Y4F2 and B0BFF9N6QQ.

8 **RESPONSE:** Hyperice is without sufficient information or knowledge to
9 form a belief as to the truth of the allegations in this paragraph of the First Amended
10 Complaint and, therefore, denies them.

11 24. On or about June 11, 2024, Lishui Tianque New Energy Technology
12 Co., Ltd. received a notification from Amazon. This notice informed Lishui Tianque
13 New Energy Technology Co., Ltd. that Amazon removed tianquexinnengyuan’s
14 listings, ASINs B0BFF5Y4F@ and B0BFF9N6QQ, because of the alleged
15 infringement of the ‘082 Patent. The rights owner’s name is HYPERICE and its
16 email address is barnold@hyperice.com. *See* Exhibit 5.

17 **RESPONSE:** Hyperice is without sufficient information or knowledge to
18 form a belief as to the truth of the allegations in this paragraph of the First Amended
19 Complaint and, therefore, denies them.

20 25. Plaintiff Yongkang Dilaka Technology Co., Ltd. sells massage guns on
21 Amazon under the storefront “USAYURA.” The model of the massage guns sold by
22 Yongkang Dilaka Technology Co., Ltd. at issue is X8. The corresponding ASINs
23 are B0CGNPVTCZ and B0CGNNTN33.

24 **RESPONSE:** Hyperice is without sufficient information or knowledge to
25 form a belief as to the truth of the allegations in this paragraph of the First Amended
26 Complaint and, therefore, denies them.

27 26. On or about June 11, 2024, Amazon removed USAYURA’s listings,
28 ASINs B0CGNPVTCZ and B0CGNNTN33, which belong to Plaintiff Yongkang

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Dilaka Technology Co., Ltd., because of the alleged infringement of the ‘082 Patent.

RESPONSE: Hyperice is without sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph of the First Amended Complaint and, therefore, denies them.

27. Plaintiff Yongkang Health Freight Co., Ltd. sells massage guns on Amazon under the storefront “JQX-US.” The model of the massage guns sold by Yongkang Health Freight Co., Ltd. at issue is M68-7. The corresponding ASINs are B0CGN8SYDQ and B0CGN8FM2T.

RESPONSE: Hyperice is without sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph of the First Amended Complaint and, therefore, denies them.

28. Amazon removed JQX-US’s listings, ASINs B0CGN8SYDQ and B0CGN8FM2T, which belong to Yongkang Health Freight Co., Ltd., because of the alleged infringement of the ‘082 Patent.

RESPONSE: Hyperice is without sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph of the First Amended Complaint and, therefore, denies them.

29. Plaintiff Zhejiang Aerlang Technology Co., Ltd. manufactures various models of massage guns, including the EM8, EM9, EM10, EM11, EM13, EM15, EM16, EM17, and EM18, which it sells to various retailers, including Hangzhou Linghui Intelligent Technology Co., Ltd.

RESPONSE: Hyperice is without sufficient information or knowledge to form a belief as to the truth of the allegations in this paragraph of the First Amended Complaint and, therefore, denies them.

30. Plaintiff Hangzhou Linghui Intelligent Technology Co., Ltd. sells massage guns on Amazon under the storefront “Lnhui.” The models of the massage guns sold by Hangzhou Linghui Intelligent Technology Co., Ltd. at issue are EM17 and EM13. The corresponding ASINs are B0BQ2YRWX8, B0BQ2YJY7H,

1 B08MLB2B4H, B0BDWH4LQ2, B0CR7LPW4L, B0CTFV1T5Q and
2 B0CTG678VS.

3 **RESPONSE:** Hyperice is without sufficient information or knowledge to
4 form a belief as to the truth of the allegations in this paragraph of the First Amended
5 Complaint and, therefore, denies them.

6 31. On or about June 12, 2024, Hangzhou Linghui Intelligent Technology
7 Co., Ltd. received several notifications from Amazon. These notices informed
8 Hangzhou Linghui Intelligent Technology Co., Ltd. that Amazon removed Lnhui's
9 listings, ASINs B0BQ2YRWX8, B0BQ2YJY7H, B08MLB2B4H, B0BDWH4LQ2,
10 B0CR7LPW4L, B0CTFV1T5Q and B0CTG678VS, because of the alleged
11 infringement of the '082 Patent. The rights owner's name is HYPERICE and its
12 email address is barnold@hyperice.com. *See* Exhibit 6.

13 **RESPONSE:** Hyperice is without sufficient information or knowledge to
14 form a belief as to the truth of the allegations in this paragraph of the First Amended
15 Complaint and, therefore, denies them.

16 32. The Amazon marketplace constitutes Plaintiffs' primary sales
17 channel into the United States. To remain competitive in the United States market
18 for massage guns, Plaintiffs need their products listed in the Amazon marketplace.
19 Amazon has removed Plaintiffs' massage guns from the marketplace, preventing
20 Plaintiffs from accessing their largest channel of trade because of Defendants'
21 alleged infringement complaint to Amazon. Thus, Defendants' submission of
22 Amazon infringement complaint has caused immediate and substantial harm to
23 Plaintiffs.

24 **RESPONSE:** Hyperice is without sufficient information or knowledge to
25 form a belief as to the truth of the allegations in this paragraph of the First Amended
26 Complaint and, therefore, denies them.

27 **B. U.S. Patent NO. 11,938,082.**

28 33. The '082 Patent lists HYPERICE IP SUBCO, LLC as the applicant and

1 assignee. *See* Exhibit 1, the '082 Patent, cover page.

2 **RESPONSE:** Admitted.

3 34. The '082 Patent is entitled "Massage Device Having Variable Stroke
4 Length" and claims "A percussive massager comprising: [...] drive mechanism that
5 controls a predetermined stroke length of the piston; and quick-connect system [...]
6 is configured to have a proximal end of the first massaging head inserted into or
7 removed from the bore while the piston reciprocates the predetermined stroke length
8 at the first speed." *See* Exhibit 1 at 10:4-11.

9 **RESPONSE:** Admitted.

10 35. The application for the '082 Patent was filed on November 20, 2023.
11 The '082 Patent was issued on March 26, 2024.

12 **RESPONSE:** Admitted.

13 36. Claims 1 and 18 are the only independent claims of the '082 Patent.

14 **RESPONSE:** Admitted.

15 37. Claim 1 requires:

16 a drive mechanism that controls a predetermined stroke length of the
17 piston.

18 *See* Exhibit 1 at 10:4-5.

19 **RESPONSE:** Admitted.

20 38. Claim 18 requires:

21 providing a drive mechanism configured to control a predetermined
22 stroke length of the piston.

23 *See* Exhibit 1 at 11:10-11.

24 **RESPONSE:** Admitted.

25 39. Accordingly, all claims in the '082 Patent require a drive mechanism
26 that controls a predetermined stroke length of the piston.

27 **RESPONSE:** Admitted.

28 40. Claim 1 also requires:

1 a quick-connect system comprising the distal end of the piston
2 and a first massaging head, wherein the quick-connect system is
3 configured to have a proximal end of the first massaging head inserted
4 into or removed from the bore while the piston reciprocates the
5 predetermined stroke length at the first speed.

6 *See Exhibit 1 at 10:6-11.*

7 **RESPONSE:** Admitted.

8 41. Claim 18 also requires:

9 providing a quick-connect system comprising the distal end of
10 the piston and a first massaging head, wherein a proximal end of the
11 first massaging head is configured to be inserted into or removed from
12 the bore while the piston reciprocates the predetermined stroke length
13 at the first speed.

14 *See Exhibit 1 at 11:12-17.*

15 **RESPONSE:** Admitted.

16 42. Accordingly, all claims in the '082 Patent require a quick-connect
17 system at a distal end of the piston and a first massaging head.

18 **RESPONSE:** Admitted.

19 43. The '082 Patent is a continuation of application No. 18/466,702,
20 which is a continuation of U.S. Patent No. 11,857,482 ("the '482 Patent").

21 **RESPONSE:** Admitted.

22 44. In the Notice of Pre-AIA or AIA Status for the '082 Patent, issued
23 during the prosecution, the patent examiner stated that the claims of the '082
24 Patent and the '482 Patent, "[a]lthough not identical, are not patentably distinct
25 from each other."

26 **RESPONSE:** Denied.

27 **C. U.S. Patent NO. 11,857,482.**

28 45. The '482 Patent lists HYPERICE IP SUBCO, LLC as the applicant

1 and assignee. *See* Exhibit 2, the '482 Patent, cover page.

2 **RESPONSE:** Admitted.

3 46. The '482 Patent is entitled "Massage Device Having Variable Stroke
4 Length" and claims "A percussive massager comprising: [...] a drive mechanism
5 that controls a predetermined stroke length of the piston; and quick-connect system
6 [...] is configured to secure the first massaging head to the percussive massager by
7 a proximal end of the massaging head being slid into the bore while the piston
8 reciprocates the predetermined stroke length at the first speed." *See* Exhibit 2 at
9 10:8-16.

10 **RESPONSE:** Admitted.

11 47. The application for the '482 Patent was filed on February 25, 2022.
12 The '482 Patent was issued on January 2, 2024.

13 **RESPONSE:** Admitted.

14 48. Claims 1, 32 and 34 are the only independent claims of the '482
15 Patent.

16 **RESPONSE:** Admitted.

17 49. Claim 1 requires:
18 a drive mechanism that controls a predetermined stroke length of the piston.
19 *See* '482 Patent at 10:8-9.

20 **RESPONSE:** Admitted.

21 50. Claim 32 requires:
22 positioning a drive mechanism that controls a predetermined
23 stroke length of the piston within the housing, wherein the quick
24 release connector is configured to secure a first massaging head by
25 sliding the first massaging head into the bore while the piston
26 reciprocates the predetermined stroke length at the first speed.
27 *See* '482 Patent at 11:54-59.

28 **RESPONSE:** Admitted.

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1 51. Claim 34 requires:
2 a drive mechanism between the motor and the piston that controls a
3 predetermined stroke length of the piston; and
4 *See* '482 Patent at 12:5-6.

5 **RESPONSE:** Admitted.

6 52. Accordingly, all claims in the '482 Patent require a drive mechanism
7 that controls a predetermined stroke length of the piston.

8 **RESPONSE:** Admitted.

9 53. Claim 1 also requires:
10 a quick-connect system comprising the distal end of the piston
11 and a first massaging head, wherein the quick-connect system is
12 configured to secure the first massaging head to the percussive
13 massager by a proximal end of the massaging head being slid into the
14 bore while the piston reciprocates the predetermined stroke length at
15 the first speed.
16 *See* '482 Patent at 10:10-16.

17 **RESPONSE:** Admitted.

18 54. Claim 32 also requires:
19 operatively connecting the motor to a proximal end of a piston,
20 wherein the motor is configured to cause the piston to reciprocate at a
21 first speed, wherein a distal end of the piston has a quick release
22 connector, wherein the quick release connector has a bore having a
23 substantially cylindrical structure; and
24 *See* '482 Patent at 11:47-53.

25 **RESPONSE:** Admitted.

26 55. Claim 34 also requires:
27 a quick release connector at the distal end of the piston, wherein
28 the quick release connector is configured to secure a first massaging

1 head while the piston reciprocates a predetermined stroke length at the
2 first speed, wherein the first massaging head has a substantially
3 cylindrical pocket to receive the quick release connector.

4 *See* '482 Patent at 12:8-14.

5 **RESPONSE:** Admitted.

6 56. Accordingly, all claims in the '482 Patent require a quick-connect
7 system at a distal end of the piston and a first massaging head.

8 **RESPONSE:** Admitted.

9 **D. HYPERICE Interfered with Plaintiffs' Sales Via Amazon.com by**
10 **Abusing the APEX and Erroneously Accusing Plaintiffs' Non-Infringing**
11 **Products of Patent Infringement.**

12 57. Upon information and belief, in or about March or April 2024, shortly
13 after the '082 Patent was issued, HYPERICE initiated an Amazon Patent Evaluation
14 Express Procedure ("APEX") based on Claim 1 of the '082 Patent against certain
15 third-party massage guns sellers (not Plaintiffs) on Amazon.com.

16 **RESPONSE:** Admitted.

17 58. Upon information and belief, HYPERICE obtained a decision in the
18 APEX that the patent owner, HYPERICE, was likely to prove that certain
19 third-party massage guns infringes [*sic*] Claim 1 of the '082 Patent.

20 **RESPONSE:** Admitted.

21 59. Upon information and belief, as a result of the decision from the APEX,
22 the third-party massage guns were delisted from Amazon.

23 **RESPONSE:** Admitted.

24 60. Upon information and belief, on or about June 11, 2024, based on the
25 APEX decision, HYPERICE filed complaints with Amazon against Plaintiffs' Non-
26 Infringing Products.

27 **RESPONSE:** Denied.

28 61. The Non-Infringing Products do not infringe the '082 Patent because,

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1 at least, they do not include a drive mechanism that controls a predetermined stroke
2 length of the piston, as required by all claims of the '082 Patent.

3 **RESPONSE:** Denied.

4 62. The Non-Infringing Products do not infringe the '082 Patent because,
5 at least, they do not include a quick-connect system at a distal end of the piston and
6 a first massaging head, as required by all claims of the '082 Patent.

7 **RESPONSE:** Denied.

8 63. As discussed above, because the '482 and '082 Patents are not
9 patentably distinct, Plaintiffs Non-Infringing Products do not infringe the '482
10 Patent for the same reasons they do not infringe the '082 Patent.

11 **RESPONSE:** Denied.

12 64. On or about June 11, 2024, Amazon delisted the Plaintiffs' Non-
13 Infringing Products without any prior notice, based on HYPERICE's infringement
14 complaints.

15 **RESPONSE:** Hyperice is without sufficient information or knowledge to
16 form a belief as to the truth of the allegations in this paragraph of the First Amended
17 Complaint and, therefore, denies them.

18 65. Under the Amazon Patent Evaluation Express Procedure ("APEX"),
19 "If there is litigation pending on a patent subject to a proposed or pending
20 Evaluation, Amazon may decide not to initiate or suspend an Evaluation until the
21 completion of that litigation." *See* Exhibit 8 at 1. In practice, Amazon will not initiate
22 or suspend an Evaluation until the completion of that litigation.

23 **RESPONSE:** Hyperice is without sufficient information or knowledge to
24 form a belief as to the truth of the allegations in this paragraph of the Complaint and,
25 therefore, denies them.

26 66. HYPERICE abused APEX system against Plaintiffs using the '082
27 Patent to initiate the APEX while pursuing district court patent litigations against
28 many other massage gun competitors asserting the '482 Patent, which is not

1 patentably distinct from the '082 Patent (both derive from the same "parent" patent
2 application) and which contains the same key claim limitations.

3 **RESPONSE:** Denied.

4 67. HYPERICE's complaints to Amazon have caused substantial damages
5 and reputational harm to Plaintiffs. The delisting has already severely harmed
6 Plaintiffs' business. Plaintiffs' lost sales of the delisted products amount to
7 significant revenue each day and a significant portion of Plaintiffs' projected
8 revenue. Furthermore, the delisting also led to declines in Plaintiffs' product
9 reviews, ratings, and Amazon ranking, which results in lower product visibility in
10 consumer searches.

11 **RESPONSE:** Hyperice is without sufficient information or knowledge to
12 form a belief as to the truth of the allegations in this paragraph of the First Amended
13 Complaint and, therefore, denies them.

14 68. On June 28, 2024, Plaintiffs submitted a petition to Amazon requesting
15 that Amazon acknowledge non-infringement and reinstate the Non- Infringing
16 Products.

17 **RESPONSE:** Hyperice is without sufficient information or knowledge to
18 form a belief as to the truth of the allegations in this paragraph of the First Amended
19 Complaint and, therefore, denies them.

20 69. On June 28, 2024, Amazon notified Plaintiffs that it had decide [*sic*] to
21 reinstated [*sic*] the Non-Infringing Products on the ground of, inter alia, non-
22 infringement.

23 **RESPONSE:** Hyperice is without sufficient information or knowledge to
24 form a belief as to the truth of the allegations in this paragraph of the First Amended
25 Complaint and, therefore, denies them.

26 70. On July 1, 2024, HYPERICE sent a warning email stating that it intends
27 to ask Amazon to take down Plaintiffs' Non-Infringing Products and threatened to
28 sue Plaintiffs if Amazon does not remove the Non-Infringing Products again.

1 HYPERICE also intends to obtain court orders instructing Amazon to permanently
2 take down Plaintiffs' Non-Infringing Products for allegedly infringing the '082 and
3 '482 Patents. *See* Exhibit 7.

4 **RESPONSE:** Denied.

5 71. Based on the foregoing, a justiciable case or controversy exists between
6 Plaintiffs and HYPERICE as to whether the Non-Infringing Products infringe the
7 '082 and '482 Patents, and whether HYPERICE wrongfully abused the APEX by
8 using the results of APEX actions against third-party massage guns to file complaints
9 with Amazon, leading to the delisting of Plaintiffs' Non-Infringing Products.
10 Plaintiffs therefore have filed this Complaint to redress the abuse of the APEX,
11 obtain declaratory judgments of patent noninfringement, and remedy the damage to
12 their business caused by HYPERICE's interference with Plaintiffs' Amazon.com
13 business.

14 **RESPONSE:** Hyperice is without sufficient information or knowledge to
15 form a belief as to the truth of the allegations in this paragraph of the First
16 Amended Complaint and, therefore, denies them.

17 **COUNT I**

18 **Declaratory Judgment of Non-Infringement – the '082 and '482 Patents**

19 72. Plaintiffs repeat and reallege each of the preceding paragraphs as if they
20 are restated here and incorporate them by reference.

21 **RESPONSE:** Hyperice repeats and realleges its answers to the preceding
22 paragraphs as if fully set forth herein.

23 73. The manufacture, use, offer for sale, sale, and/or import of Plaintiffs'
24 massage guns, including without limitation the Non-Infringing Products, have not
25 infringed and will not infringe, directly or indirectly, literally or under the doctrine
26 of equivalents, any valid claim of the '082 and '482 Patents.

27 **RESPONSE:** Denied.

28 74. The Non-Infringing Products do not infringe the '082 Patent and '482

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Patent because they do not include a drive mechanism that controls a predetermined stroke length of the piston, as required by all claims of the '082 and '482 Patents.

RESPONSE: Denied.

75. The Non-Infringing Products do not infringe the '082 Patent and '482 Patent because they do not include a quick-connect system at a distal end of the piston and a first massaging head, as required by all claims of the '082 and '482 Patents.

RESPONSE: Denied.

76. An actual and justiciable case or controversy therefore exists between Plaintiffs and HYPERICE regarding whether the Non-Infringing Products have infringed the claims of the '082 and '482 Patents. Declaratory relief is thus appropriate and necessary to establish that the making, using, importation, sale, or offer of sale of the Non-Infringing Products do not infringe, directly or indirectly, literally or under the doctrine of equivalents, any valid and enforceable claim of the '082 and '482 Patents. Plaintiffs are entitled to a judgment declaring that they have not infringed and will not infringe any claim of the '082 and '482 Patents.

RESPONSE: Denied.

COUNT II

Unfair Competition

77. Plaintiffs repeat and reallege each of the preceding paragraphs as if they are restated here and incorporate them by reference.

RESPONSE: Hyperice repeats and realleges its answers to the preceding paragraphs as if fully set forth herein.

78. California statutory law prohibits acts of "unfair competition" including any "unlawful, unfair and fraudulent business act or practice." *Cal. Bus. & Prof. Code* § 17200.

RESPONSE: Denied.

79. Upon information and belief, Amazon will not initiate or suspend an

1 ongoing APEX for a patent that is the subject of pending federal district court
2 litigation.

3 **RESPONSE:** Denied.

4 80. The '082 Patent and the '482 Patent are not patentably distinct from
5 each other, both derive from the same "parent" patent application and containing the
6 same key claim limitations.

7 **RESPONSE:** Denied.

8 81. HYPERICE initiate a district court lawsuit with one (the '482 Patent)
9 while asserting the other (the '082 Patent) in the APEX process.

10 **RESPONSE:** Admitted.

11 82. For many top Amazon sellers, the prevailing strategy upon receiving an
12 invitation for an APEX is to file a declaratory judgment action to terminate or
13 suspend the APEX.

14 **RESPONSE:** Hyperice is without sufficient information or knowledge to
15 form a belief as to the truth of the allegations in this paragraph of the First Amended
16 Complaint and, therefore, denies them.

17 83. To circumvent this issue, HYPERICE selected relatively small sellers
18 in the massage gun category of Amazon for the APEX proceeding with the '082
19 Patent. HYPERICE subsequently leveraged the favorable outcomes to target the top
20 sellers, including the Plaintiffs.

21 **RESPONSE:** Denied.

22 84. Leveraging the success of the APEX decision against third-party
23 massage guns, HYPERICE abused APEX by submitting infringement complaints
24 based on the '082 Patent against Plaintiffs' Non-Infringing Products. This abuse of
25 the APEX decision led Amazon to delist Plaintiffs' Non-Infringing Products without
26 providing Plaintiffs the opportunity to assert any defenses.

27 **RESPONSE:** Denied.

28 85. As a direct and proximate result of HYPERICE's unfair competition,

1 Plaintiffs have been, and continue to be, materially harmed in an amount to be
2 proven at trial and in a manner that cannot be fully measured or compensated in
3 economic terms alone. Such irreparable harm will continue unless HYPERICE's
4 acts are restrained and enjoined during and after this action.

5 **RESPONSE:** Denied.

6 **COUNT III**

7 **Tortious Interference**

8 86. Plaintiffs repeat and reallege each of the preceding paragraphs as if they
9 are restated here and incorporate them by reference.

10 **RESPONSE:** Hyperice repeats and realleges its answers to the preceding
11 paragraphs as if fully set forth herein.

12 87. HYPERICE knowingly and intentionally interfered with Plaintiffs'
13 valid and existing business relationships and expectancy of sales of their massage
14 guns, including the Non-Infringing Products, via Amazon.com for an improper
15 purpose and by improper means, causing Amazon to remove the ASINs for the Non-
16 Infringing Products. This interference resulted in damages from Plaintiffs' lost sales
17 of the Non-Infringing Products and associated products.

18 **RESPONSE:** Denied.

19 88. By abusing the APEX system, HYPERICE intentionally interfered with
20 and caused the termination of Plaintiffs' ability to sell the Non-Infringing Products
21 on Amazon.com through improper means.

22 **RESPONSE:** Denied.

23 89. HYPERICE lacked an objectively reasonable basis to leverage the
24 results of its APEX actions against third-party products to accuse the Plaintiffs' Non-
25 Infringing Products of infringing the '082 Patent that HYPERICE knew or should
26 have known are not infringed by the Non-Infringing Products.

27 **RESPONSE:** Denied.

28 90. As a direct and proximate result of HYPERICE's unfair competition,

1 Plaintiffs have suffered damages, including significant lost in sales of the Non-
2 Infringing Products and other massage guns, resulting in lost revenue and profits
3 directly attributable to those lost sales. The exact amount of these damages will be
4 proven at trial and cannot be fully measured or compensated in economic terms
5 alone.

6 **RESPONSE:** Denied.

7 **AFFIRMATIVE DEFENSES**

8 Hyperice's affirmative defenses are listed below. By alleging the Affirmative
9 Defenses set forth below, Hyperice does not agree or concede that they bear the
10 burden of proof or the burden of persuasion on any of these issues, whether in whole
11 or in part. Hyperice reserves the right to amend its Answer and to add and/or amend
12 its Affirmative Defenses consistent with any facts discovered in this case.

13 **FIRST AFFIRMATIVE DEFENSE**

14 **(Failure to Mitigate)**

15 Plaintiffs failed to make reasonable efforts to mitigate damages and their
16 damages are barred and/or limited as a result.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **(No Injunction)**

19 Plaintiffs are not entitled to an injunction because Plaintiffs are not likely to
20 prevail on the merits, have not suffered and will not suffer irreparable harm due to
21 Hyperice's conduct, and have an adequate remedy at law.

22 **THIRD AFFIRMATIVE DEFENSE**

23 **(No Attorneys' Fees or Costs)**

24 Plaintiffs are not entitled to recover attorneys' fees associated with this action
25 under 35 U.S.C. § 285 or costs associated with this action under 35 U.S.C. § 288.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 **(Equitable Doctrines)**

28 Plaintiffs' claims against Hyperice are barred by the equitable doctrines of

1 waiver, estoppel, acquiescence, and/or unclean hands.

2 **FIFTH AFFIRMATIVE DEFENSE**

3 **(No False or Misleading Statements)**

4 Hyperice made no false or misleading statements necessary to give rise to
5 Plaintiffs' Lanham Act claims.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **(No Objectively Baseless and/or Bad Faith Assertions)**

8 Hyperice made no objectively baseless and/or bad faith assertions necessary
9 to give rise to either Plaintiffs' Unfair Competition or Tortious Interference claims.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 **(Reservation of Rights)**

12 Hyperice reserves any and all additional defenses available under Section 35
13 of the United States Code, the rules, regulations, or laws related thereto, the Federal
14 Rules of Civil Procedure, the Rules of this Court, and/or otherwise in law or equity,
15 now existing, or later arising, as may be discovered as there has been no discovery
16 in this case.

17 **COUNTERCLAIM**

18 Hyper Ice, Inc. and Hyperice IP Subco, LLC (collectively "Hyperice") allege
19 as follows for this Counterclaim for Patent Infringement ("Complaint") against
20 Counter-Defendants Zhejiang Aerlang Technology Co., Ltd., and Hangzhou
21 Linghui Intelligent Technology Co., Ltd ("Counter-Defendants").

22 **THE PARTIES**

23 1. Hyper Ice, Inc. is a California corporation with its principal place of
24 business at 525 Technology Drive, Suite 100, Irvine, California 92618.

25 2. Hyperice IP Subco, LLC is a limited liability company organized under
26 the laws of the State of Delaware.

27 3. Either itself or through its subsidiaries, parents, or other related
28 companies, Counter-Defendants manufacture, offer to sell, and/or sell infringing

1 products, via Amazon.com and various retail stores, to consumers in this District,
2 throughout the State of California, and throughout the United States.

3 **JURISDICTION AND VENUE**

4 4. This is an action for patent infringement under 35 U.S.C. §§ 271 *et seq.*
5 brought by Hyperice against Counter-Defendants for Counter-Defendants’
6 infringement of U.S. Patent No. 11,857,482 (“the ‘482 Patent”), U.S. Patent No.
7 11,938,082 (“the ‘082 Patent”), and U.S. Patent No. 12,036,174 (“the ‘174 Patent”).

8 5. This Court has subject matter jurisdiction over Hyperice’s claims
9 asserted herein pursuant to 28 U.S.C. §§ 1331 and 1338(a) because those claims
10 arise under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

11 6. This Court has personal jurisdiction over Counter-Defendants by virtue
12 of, *inter alia*, Counter-Defendants’ conduct of business in this District; their
13 purposeful availment of the rights and benefits of California law; their filing of this
14 declaratory judgment suit in the District; and their substantial, continuous, and
15 systematic contacts with the State of California and this District. On information and
16 belief, Counter-Defendants: (1) intentionally market and sell their infringing
17 products to residents of this State; and (2) enjoy substantial income from this State.

18 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 28
19 U.S.C. § 1400(b) because Counter-Defendants have committed acts of infringement
20 in this District.

21 **GENERAL ALLEGATIONS**

22 8. The ‘482 Patent is entitled “Massage Device Having Variable Stroke
23 Length” and issued on January 2, 2024, claiming priority to Application No.
24 14/317,573, filed on June 27, 2014, and Provisional Application No. 61/841,693,
25 filed on July 1, 2013. A true and correct copy of the ‘482 Patent is attached hereto
26 as Exhibit 1.

27 9. The ‘082 Patent is entitled “Massage Device Having Variable Stroke
28 Length” and issued on March 26, 2024, claiming priority to Application No.

1 14/317,573, filed on June 27, 2014, and Provisional Application No. 61/841,693,
2 filed on July 1, 2013. A true and correct copy of the ‘082 Patent is attached hereto
3 as Exhibit 2.

4 10. Philip C. Danby and John Charles Danby are the named inventors of
5 the inventions disclosed in the ‘482 Patent and the ‘082 Patent. Hyperice IP Subco,
6 LLC, a wholly owned subsidiary of Hyper Ice, Inc., is the owner of the ‘482 Patent
7 and the ‘082 Patent. Hyper Ice, Inc. is the exclusive licensee that has been granted
8 the express, irrevocable right to enforce and defend the ‘482 Patent and the ‘082
9 Patent.

10 11. The ‘174 Patent is entitled “Communication Devices, Methods, and
11 Systems” and issued on July 16, 2024, claiming priority to Application No.
12 18/526,980, filed on December 1, 2023, and to, *inter alia*, Provisional Application
13 No. 62/575,951, filed on October 23, 2017. A true and correct copy of the ‘174
14 Patent is attached hereto as Exhibit 5.

15 12. Matthew Robert Leaper is the named inventor of the inventions
16 disclosed in the ‘174 Patent. DataFeel Inc. is the assignee of the ‘174 Patent, and
17 Hyper Ice, Inc. is an exclusive licensee that has been granted the express, irrevocable
18 right to, *inter alia*, sublicense, enforce, and defend the ‘174 Patent.

19 13. This action arises out of Counter-Defendants’ direct infringement of the
20 ‘482 Patent, the ‘082 Patent, and the ‘174 Patent.

21 14. Since at least 2018, Hyperice has developed, arranged for the
22 manufacture of, offered for sale, and sold the Hypervolt line of battery-powered
23 percussive massage devices, including the Hypervolt Go 2, Hypervolt 2, and
24 Hypervolt 2 Pro, all of which are covered by one or more claims of the ‘482 Patent
25 and the ‘082 Patent.

26 15. Counter-Defendants manufacture, offer for sale and/or sell products
27 that infringe the ‘482 Patent and ‘082 Patent, including but not limited to the models
28 listed in Counter-Defendants’ First Amended Complaint (the “Infringing Products”).

Attached hereto as Exhibits 3 and 4 are representative claim charts.

16. By no later than June 28, 2024, Counter-Defendants knew of the ‘082 Patent and the ‘482 Patent and knew, or acted with willful, intentional, and conscious disregard of the objectively high likelihood, that their conduct constitutes infringement of the ‘082 Patent and the ‘482 Patent.

17. Counter-Defendants manufacture, offer for sale and/or sell products that infringe the ’174 Patent, including but not limited to AERLANG Massage Gun with Heat and Cold sold on Amazon.com as ASIN B0D44PX8QN (the “Accused Products”). Attached hereto as Exhibit 6 is a representative claim chart.

18. By no later than the date of this First Amended Answer and Counterclaims, Counter-Defendants knew of the ’174 Patent and know, or act with willful, intentional, and conscious disregard of the objectively high likelihood, that their conduct constitutes infringement of the ’174 Patent.

COUNT 1 – PATENT INFRINGEMENT

19. Hyperice incorporates by reference the allegations in Paragraphs 1-18 above.

20. Counter-Defendants have infringed and continue to infringe the ‘482 Patent under the Patent Laws of the United States, 35 U.S.C §§ 271 *et seq.* Counter-Defendants offer for sale and/or sell and/or manufacture the Infringing Products at issue in this case.

21. Counter-Defendants infringe at least Claim 1 of the ‘482 Patent. Counter-Defendants’ Infringing Products are battery-powered percussive massagers that include the following claim limitations. Hyperice believes that the Infringing Products literally meet the following claim limitations. If any of the limitations are not literally met, the Infringing Products meet the limitations under the doctrine of equivalents, because they perform the same function in substantially the same way to achieve substantially the same result, and/or because the relevant structures and functions of the Infringing Products are insubstantially different from the claimed

1 limitation:

- 2 a. a housing;
- 3 b. a piston having a proximal end and a distal end, the distal end of
- 4 the piston having a substantially cylindrical bore;
- 5 c. a motor at least partially within the housing and operatively
- 6 connected to the proximal end of the piston, wherein the motor
- 7 is configured to cause the piston to reciprocate at a first speed;
- 8 d. a drive mechanism that controls a predetermined stroke length of
- 9 the piston; and
- 10 e. a quick-connect system comprising the distal end of the piston
- 11 and a first massaging head, wherein the quick-connect system is
- 12 configured to secure the first massaging head to the percussive
- 13 massager by a proximal end of the massaging head being slid into
- 14 the bore while the piston reciprocates the predetermined stroke
- 15 length at the first speed.

16 22. Counter-Defendants' infringement of the '482 Patent has caused, and
17 will continue to cause, significant damage to Hyperice. As a result, Hyperice is
18 entitled to an award of damages adequate to compensate it for the infringement in
19 an amount that is in no event less than a reasonable royalty pursuant to 35 U.S.C.
20 §284. Hyperice is also entitled to recover prejudgment interest, post-judgment
21 interest, and costs.

22 23. As a result of Counter-Defendants' infringement of the '482 Patent,
23 Hyperice has suffered irreparable harm and impairment of the value of its patent
24 rights, and Hyperice will continue to suffer irreparable harm and impairment of the
25 value of its patent rights, unless and until Counter-Defendants are permanently
26 enjoined by this Court from infringing the '482 Patent under 35 U.S.C. §283.
27 Hyperice has no adequate remedy at law and is entitled to a permanent injunction
28 against Counter-Defendants.

24. Counter-Defendants' infringement of the '482 Patent has been and continues to be willful. As noted above, Counter-Defendants have had knowledge of the '482 Patent and know, or act with willful, intentional, and conscious disregard of the objectively high likelihood, that their conduct constitutes infringement of the '482 Patent. Nevertheless, Counter-Defendants continue to infringe the '482 Patent—wanton, malicious, and egregious conduct that constitutes willful infringement under 35 U.S.C. §284, entitling Hyperice to enhanced damages.

COUNT 2 – PATENT INFRINGEMENT

25. Hyperice incorporates by reference the allegations in Paragraphs 1-18 above.

26. Counter-Defendants have infringed and continue to infringe the '082 Patent under the Patent Laws of the United States, 35 U.S.C §§ 271 *et seq.* Counter-Defendants offer for sale and/or sell and/or manufacture the Infringing Products at issue in this case.

27. Counter-Defendants infringe at least Claim 1 of the '082 Patent. Counter-Defendants offer for sale and/or sell and/or manufacture the Infringing Products, which are battery-powered percussive massagers that include the following claim limitations. Hyperice believes that the Infringing Products literally meet the following claim limitations. If any of the limitations are not literally met, the Infringing Products meet the limitations under the doctrine of equivalents, because they perform the same function in substantially the same way to achieve substantially the same result, and/or because the relevant structures and functions of the Infringing Products are insubstantially different from the claimed limitation.

a. a housing;

b. a piston having a proximal end and a distal end, the distal end of the piston having a bore;

c. a motor operatively connected to the proximal end of the piston, wherein the motor is configured to cause the piston to reciprocate at a first

1 speed;

2 d. a drive mechanism that controls a predetermined stroke length
3 of the piston; and

4 e. a quick-connect system comprising the distal end of the piston
5 and a first massaging head, wherein the quick-connect system is configured
6 to have a proximal end of the first massaging head inserted into or removed
7 from the bore while the piston reciprocates the predetermined stroke length
8 at the first speed.

9 28. Counter-Defendants' infringement of the '082 Patent has caused, and
10 will continue to cause, significant damage to Hyperice. As a result, Hyperice is
11 entitled to an award of damages adequate to compensate it for the infringement in
12 an amount that is in no event less than a reasonable royalty pursuant to 35 U.S.C.
13 §284. Hyperice is also entitled to recover prejudgment interest, post-judgment
14 interest, and costs.

15 29. As a result of Counter-Defendants' infringement of the '082 Patent,
16 Hyperice has suffered irreparable harm and impairment of the value of its patent
17 rights, and Hyperice will continue to suffer irreparable harm and impairment of the
18 value of its patent rights, unless and until Counter-Defendants are permanently
19 enjoined by this Court from infringing the '082 Patent under 35 U.S.C. §283.
20 Hyperice has no adequate remedy at law and is entitled to a permanent injunction
21 against Counter-Defendants.

22 30. Counter-Defendants' infringement of the '082 Patent has been and
23 continues to be willful. As noted above, Counter-Defendants have had knowledge
24 of the '082 Patent and know, or act with willful, intentional, and conscious disregard
25 of the objectively high likelihood, that their conduct constitutes infringement of the
26 '082 Patent. Nevertheless, Counter-Defendants continue to infringe the '082
27 Patent—wanton, malicious, and egregious conduct that constitutes willful
28 infringement under 35 U.S.C. §284, entitling Hyperice to enhanced damages.

COUNT 3 – PATENT INFRINGEMENT

31. Hyperice incorporates by reference the allegations in Paragraphs 1-18 above.

32. Counter-Defendants have infringed and continue to infringe the '174 Patent under the Patent Laws of the United States, 35 U.S.C §§ 271 *et seq.* Defendant offers for sale and/or sells the Accused Products.

33. Counter-Defendants infringe at least Claim 17 of the '174 Patent. The Accused Products are battery-powered devices that include the following claim limitations. Hyperice believes that the Accused Products literally meet the following claim limitations. If any of the limitations are not literally met, the Accused Products meet the limitations under the doctrine of equivalents, because they perform the same function in substantially the same way to achieve substantially the same result, and/or because the relevant structures and functions of the Accused Products are insubstantially different from the claimed limitation:

A treatment device, comprising:

- a. a body provided with a power source and a processing unit configured to receive input data and generate a control signal based on the input data, the body including a skin contacting surface maintainable against skin of a user by a force applied by a hand of the user when gripping the body; and
- b. a first energy generator element and a second energy generator element coupled to the body, the first and second energy generator elements being independently operable to convert electricity from the power source into a first energy type and a second energy type, respectively, and direct the first and second energy types toward an area of skin, the first energy generator element including an impact generator element having a tissue contact surface that is linearly actuatable along an axis to contact

1 and cause corresponding physical movement of the area of skin;
2 c. wherein the processing unit is operable to output an optical signal
3 on a display that is observable by eyes of the user, the output
4 corresponding to the control signal.

5 17. Counter-Defendants' infringement of the '174 Patent has caused, and
6 will continue to cause, significant damage to Hyperice. As a result, Hyperice is
7 entitled to an award of damages adequate to compensate it for the infringement in
8 an amount that is in no event less than a reasonable royalty pursuant to 35 U.S.C.
9 §284. Hyperice is also entitled to recover prejudgment interest, post-judgment
10 interest, and costs.

11 18. As a result of Counter-Defendants' infringement of the '174 Patent,
12 Hyperice has suffered irreparable harm and impairment of the value of its patent
13 rights, and Hyperice will continue to suffer irreparable harm and impairment of the
14 value of its patent rights, unless and until Counter-Defendants are permanently
15 enjoined by this Court from infringing the '174 Patent under 35 U.S.C. §283.
16 Hyperice has no adequate remedy at law and is entitled to a permanent injunction
17 against Counter-Defendants.

18 19. Counter-Defendants' infringement of the '174 Patent has been and
19 continues to be willful. As noted above, Counter-Defendants have knowledge of the
20 '174 Patent and know, or act with willful, intentional, and conscious disregard of the
21 objectively high likelihood, that their conduct constitutes infringement of the '174
22 Patent. Nevertheless, Counter-Defendants continue to infringe the '174 Patent—
23 wanton, malicious, and egregious conduct that constitutes willful infringement under
24 35 U.S.C. §284, entitling Hyperice to enhanced damages.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Hyperice respectfully pray that this Court grant the following
27 relief:

28 A. Enter judgment that Plaintiffs are not entitled to any of the relief

requested in their First Amended Complaint;

- B. Enter judgment in favor of Hyperice and against Plaintiffs on all claims and grant the relief sought in Hyperice's Answer to First Amended Complaint and Hyperice's Counterclaim;
- C. Enter judgment that the claims of the '482 Patent, the '082 Patent, and the '174 Patent are valid and enforceable;
- D. Enter judgment that Counter-Defendants have infringed the '482 Patent, the '082 Patent, and the '174 Patent;
- E. Enter a permanent injunction against Counter-Defendants from infringing the '482 Patent, the '082 Patent, and the '174 Patent;
- F. Award Hyperice compensatory damages for infringement of the '482 Patent, the '082 Patent, and the '174 Patent;
- G. Find that this is an exceptional case under 35 U.S.C. § 285 and award Hyperice its reasonable attorney fees and costs;
- H. Award Hyperice prejudgment and post-judgment interest; and
- I. Award Hyperice any and all other relief that the Court deems just and proper.

JURY DEMAND

Hyperice hereby demand a trial by jury of all issues so triable.

1 DATED: October 30, 2024
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4

By: 

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